

AG Contract No. KR98-0369TRN  
ADOT ECS File: JPA 98-18-**Amendment 5**  
FS Agreement No. IA-0312-98-SO-021  
TRACS No.: **Various**  
Section: SR 87, SR 260, SR 88 and  
SR 188, US 60 and SR 77  
**5-Year Program Item # 76506**

**AMENDMENT NO. 5  
INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
TONTO NATIONAL FOREST

**THIS AMENDMENT**, entered into this date June 15th 2007, **Amendment Number five (5)** to JPA 98-18, AG Contract No. KR98-0369TRN, and executed 03 June, 1998, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the UNITED STATES DEPARTMENT OF AGRICULTURE, TONTO NATIONAL FOREST, acting by and through its Contracting Officer (the "Forest Service").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

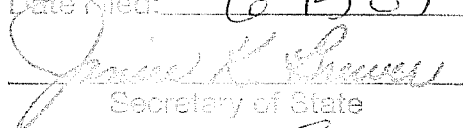

2. The Forest Service is empowered by Cooperative Funds Act of 30 June 1914 (16 U.S.C. 498), National Forest Roads and Trails Act 16 U.S.C. 532-538, and Granger-Thye Act 16 U.S.C. 572, Ref; FSM 1584.13 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Forest Service.

**THIS AGREEMENT IS AMENDED AS FOLLOWS:**

ADOT and the Forest Service agree to increase the Project's funding amount and extend the terms of this Agreement under # 5 to September 30<sup>th</sup>, 2008 and to add \$240,000.00 to funds continuing work under the Agreement. ADOT also has the option to add an additional funding amount in fiscal year 2008, not to exceed \$240,000.00 for the term of this Agreement with another bilaterally executed Modification. The Funding will be applied to Budget Item No. **76507**, FS Project No IA-0312-98-SO-021.

THEREFORE, in consideration of the mutual covenants expressed herein, this amended Agreement is as follows:

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NO. 22397  
Filed with the Secretary of State  
Date Filed: 6-15-07  
  
Secretary of State  
By: 

## **II. SCOPE OF WORK**

1. The parties hereto acknowledge the following conditions:

The State will reimburse the Forest Service no more than monthly and upon receipt and approval of an invoice. Invoice will reflect Project-to-date amount, and shall not to exceed \$240,000.00 annually.

No less than annually, meet with the State to review and evaluate the upcoming year's Program workload, and to forecast estimated costs, required staffing, etc. to be performed by the Forest Service for the benefit of the State.

## **III. MISCELLANEOUS PROVISIONS:**

Amend the following language for paragraph 1. Section III. of the Miscellaneous Provisions:

1. This Agreement expires no later than September 30<sup>th</sup>, 2008, at which time it is subject to review, renewal, or expiration. Either party may terminate this agreement at any time before the date of expiration, upon 30 days written notice to the other party.

Delete and replace the following language for paragraph 5. Section III., of the Miscellaneous Provisions:

5. Applicable laws and regulations of the State and Federal government shall govern the rights of the parties with respect to the performance of this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to select a process acceptable to the State and the Forest Service to resolve such disputes. Such process shall follow 9 U.S.C. Title 9 - Arbitration if arbitration is necessary to resolve such disputes

Add paragraph 9, 10, 11, 12, 13, and 14 to this Amended Agreement under Section III. of the Miscellaneous Provisions:

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. Full credit shall be allowed for each party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

11. Any information furnished to the Forest Service under this Agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

12. Modifications within the scope of this Agreement shall be made by mutual consent of the parties, by issuing a written modification, signed and dated by all parties, prior to any changes being performed. Neither party is obligated to fund any changes not properly approved in advance.

13. This Agreement in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations and individuals.

14. It is understood by the parties, that contributions made to the Forest Service by the State under this Agreement does not constitute endorsement by the Forest Service of the State's overall project activities.

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All contractual notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424

USDA Forest Service  
Tonto National Forest  
Terry Brennan, Forest Engineer  
2324 E. McDowell Road  
Phoenix, AZ 85006

**Except As Amended Herein, all other terms and conditions of the original Agreement and Amendment 1, 2, 3, and 4 shall remain in full force and effect.**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**U.S. DEPARTMENT OF AGRICULTURE**  
Tonto National Forest

**STATE OF ARIZONA**  
Department of Transportation

By   
GENE BLANKENBAKER  
Forest Supervisor

By   
SAM MAROUFKHANI  
Deputy State Engineer, Development

5/29/07  
(Date)

6/6/07  
(Date)

# INTERGOVERNMENTAL AGREEMENT JPA 98-018


## DETERMINATION APPROVAL FORM FOR TONTO NATIONAL FOREST

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and TONTO NATIONAL FOREST, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Forest Service Grants & Agreement Specialist who has determined that it is in proper form and within the powers and authority granted to Forest Service under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated 5/25, 2007

  
Elizabeth A. Vensel  
Grants & Agreement Specialist

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR98-0369TRN (**JPA 98-18, Amendment 5**), an Agreement between public agencies, i.e., The State of Arizona and The United States Department of Agriculture Tonto National Forest, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 11, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:13349  
Attachment